

**Letter of Findings: 01-20140589
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was required to file 2011 Indiana individual income tax return because he was an Indiana resident and received 1099-C income which was subject to Indiana income tax. Individual was responsible for the negligence penalty because he failed to affirmatively establish reasonable cause for penalty abatement. Individual was also liable for the interest because it was statutorily mandatory.

ISSUES

I. Indiana Individual Income Tax - Imposition: Non-filer.

Authority: I.R.C. § 61; I.R.C. § 108; IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-3-3; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Internal Revenue Service, Publication 970: Tax Benefits for Education.

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

II. Tax Administration - Interest and Negligence Penalty.

Authority: IC § 6-8.1-3-17; IC § 6-8.1-5-2; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the interest and negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana resident, who had not filed his Indiana income tax returns since 1998. For the tax year 2011, based on the best information available, the Indiana Department of Revenue ("Department") determined that Taxpayer received 1099-C (Cancellation of Debt) income, in the amount of \$48,915, which was subject to Indiana income tax. Taxpayer did not file his 2011 Indiana income tax return and pay the income tax that was due. The Department thus assessed Taxpayer income tax, interest, and penalty based on the best information available.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Imposition: Non-filer.

DISCUSSION

The Department found that Taxpayer is an Indiana resident who received 1099-C income in 2011 but did not file his 2011 Indiana income tax return and pay the tax due. The Department thus assessed Taxpayer Indiana income tax.

Taxpayer did not dispute that he has been an Indiana resident. Rather, Taxpayer contended that he did not owe any Indiana income tax for the tax year 2011 because his only income was social security income and he did not

work during 2011. Taxpayer, without referencing any statutory authority, also argued that the cancellation of debt was his student loan and was not subject to income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). The issue is whether Taxpayer meets the burden of proof demonstrating that the Department's proposed assessment was incorrect.

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For income tax purposes, "gross income" means all income from whatever source derived, including (but not limited to) . . . [i]ncome from discharge of indebtedness." I.R.C. § 61(12). I.R.C. § 108(a) allows five types of income from discharge of indebtedness to be excluded from gross income only when certain conditions are met. Student loans are not one of the exclusions listed in I.R.C. § 108(a). However, the "student loans" discharged not excluded from income are limited and are discussed in I.R.C. § 108(f). I.R.C. § 108(f) provides in relevant part, as follow:

(1) In general. - In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

...
(3) Exception for discharges on account of services performed for certain lenders. -Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(4) Payments under National Health Service Corps Loan Repayment Program and certain State loan repayment programs. - In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).

See also Internal Revenue Service, Publication 970: Tax Benefits for Education, available at <http://www.irs.gov/pub/irs-pdf/p970.pdf> (last visit June 4, 2015).

In this instance, Taxpayer did not dispute that he was an Indiana resident; nor did Taxpayer dispute that his creditor cancelled the debt in question. Rather, Taxpayer claimed that he did not owe Indiana income tax for the tax year 2011 because the discharge of indebtedness was his student loan and was not subject to income tax. Taxpayer however provided no supporting documents to support his protest that his discharge of indebtedness received in 2011 was of the type not subject to income tax.

Given the totality of the circumstances, in the absence of supporting documentation, the Department is not able to agree that Taxpayer met his burden demonstrating that the proposed assessment was wrong.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Interest and Negligence Penalty.

DISCUSSION

Taxpayer requested that the Department abate the statutory interest. However, pursuant to IC § 6-8.1-10-1(e), the Department is only permitted to waive the interest under IC § 6-8.1-3-17(c) and IC § 6-8.1-5-2. Taxpayer provided no documentation to support its request for the waiver. Thus, the Department does not have the authority to waive the interest imposed.

Taxpayer also requested that the Department abate the negligence penalty. The Department may assess a negligence penalty if the taxpayer "(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment; (3) incurs, upon examination by the department, a deficiency that is due to negligence; [or] (4) fails to timely remit any tax held in trust for the state" IC § 6-8.1-10-2.1(a).

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." [45 IAC 15-11-2](#)(c). The taxpayer "must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section." Id. The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case."

In this instance, Taxpayer did not provide documents to affirmatively establish that its failure to pay tax was not due to negligence.

FINDING

Taxpayer's protest of the imposition of statutory interest and negligence penalty is denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment of additional tax is denied. Taxpayer's protest of the statutory interest and the negligence penalty is also respectfully denied.

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